IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3190 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVABHAI RAGHAVBHAI VADHIA

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH H RATHOD for Petitioner Nos. 1-2

Mr.Sood, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

MR PM RAVAL for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/12/2003

ORAL JUDGEMENT

1. By filing this petition, it is prayed by the petitioners that the Department may be directed to

consider the petitioners as confirmed as Road Roller Driver from 1970, i.e. the year in which the petitioners were initially appointed on tenure basis for 29 days. It si prayed that the Department may be directed to release regular increments, D.A. etc., in their favour, treating them as permanent employees of the Department.

By the interim order of this court, the respondents are also restrained from terminating the services of the petitioners. The matter is pending before this Court since 1987.

2. The case of the petitioners is that they are appointed on 29 days basis as Road Roller Drivers since considerable period. Orders appointing them on 29 days basis is also annexed, along with the petition, which is starting from February, 1982. The case of the petitioners is that as per the Rules and Regulations, their case is required to be considered for permanency and they are required to be classified in the regular pay scale.

3. The Department has filed affidavit-in-reply opposing this petition. It is stated in the reply that the petitioners should approach the Industrial Forum and their claim whether they are required to be confirmed and whether they have completed 240 days, cannot be considered in this petition. As per the affidavit-in-reply, the petitioners are given temporary work, as required, from time to time and, therefore, they are not entitled to get benefit of being classified as work charged employees. On these and such other grounds, the petition has been resisted by the Department.

4. The matter has now reached final hearing after more than 15 years, and, all throughout, by way of interim relief, the petitioners have continued in service because there is already an interim order, which is passed in their favour at the time of admitting the matter. Mr.Rathod, learned Advocate for the petitioners, submitted that in view of the fact that, by this time, the petitioners have put in more than 23-24 years' services, may be on tenure basis, the Government may consider their case for giving them either work charged status or benefit of Government Circulars in this connection. Mr.Rathod submitted that after filing this petition, the Government has also come out with Resolution dated 17.10.1988, which is issued by the Government on the basis of the report of a Committee, named Daulat Parmar Committee. However, on this aspect, there is no material before this Court, but considering

the fact that considerable time has passed after this petition is admitted by this Court and considering the fact that even when the petitioners had approached this Court, the petitioners had served for at least more than about 5 years, of course, on temporary tenure basis, as per the orders annexed with the petition, it would be just and proper now to direct the State Government to consider the claim of the petitioners whether they are entitled to get the benefit of the Government Circular dated 17.10.1988 or whether the petitioners have continued, all throughout, with a break, if any, on artificial basis or whether, now, subsequently, the Government itself may give any benefit to the present petitioners in view of the long tenure of their service. For this purpose, it would be desirable if the petitioners make appropriate representation to the State Government, highlighting the facts of the case and also pointing out that they are serving since considerable period and that their case may be considered in view of the aforesaid Government Resolution dated 17.10.1988 or whether it is possible to classify them even as work charged employees. Since the petitioners have served for so many years, may be for some time by way of interim order of this Court, and since the Department has continued them and if work is taken from them, it is just and proper that their case for regularization or giving benefit as per the G.R., as indicated above, may be considered appropriately and also keeping in mind, the length of service, which the petitioners have rendered. For this purpose, the petitioners are permitted to make appropriate representation to respondents 1 and 2 herein and if such representation is made, respondents 1 and 2 are directed to decide the same appropriately and keeping in mind the observations made in this order, and, accordingly, appropriate order in this connection may be passed within a period of two months from the date of receipt of such representation from the petitioners.

At the time of considering the representation, the authority may also consider the long length of service which the petitioner have put in with the Department as per the records available with the Department. At the cost of repetition, it is clarified that the G.R. dated 17.10.1988 or such G.Rs. governing such type of petitioners also may be taken into consideration.

The Department may communicate the decision and in case the decision is against the petitioners, it will be open for the petitioners to challenge the same in accordance with law. Since the petitioners are protected

sine 1987 till today, the ad interim relief granted by this Court is ordered to be continued till the decision on such representation.

The Special Civil Application is accordingly allowed. Rule is made absolute accordingly, with no order as to costs.

Direct service is permitted.

2nd December, 2003 (P.B. Majmudar, J.)

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(apj)